

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's submission of a response on 9/12/11 has been received and considered. In the response, Applicant amended claims 59 and 71, canceled claims 63 and 75 and added claims 77 and 78. Therefore, claims 1, 17, 53-62, 64-74 and 76-78 are pending.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 55, 58, 67 and 70 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 55 and 67 recite ranges of numbers "between the index number" but it is unclear if this includes or excludes the index number.

5. Claims 58 and 70 recite ranges of numbers "between a first number and a second number", "between the second number and a third number" "between the third number and a fourth number" but it is unclear if this includes or excludes the first, second, third and fourth numbers respectively.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Simon et al. (pat. no. 7,172,508).

7. Regarding claim 1, Simon discloses *a method comprising: receiving, by at least one processor of a computer, one or more first type of bets, each first type having an associated bet amount and comprising a bet that the total number of units earned by a particular participant over a course of a plurality of events will fall within a first range of numbers* (first type of bets are bets that one team will score more than three runs in an inning; the participants are the two teams respectively; the plurality of events are at bats and outs that take place within the inning when one team is batting; see Fig. 8b and col. 17, lines 13-23), *wherein: the particular participant is selected from a plurality of participants each participating in at least one of the plurality of events; and for each of the plurality of events, a plurality of units are allocated among participants according to a respective finishing position of each participant* (units are runs scored during each of the at bats or outs; they are awarded to the at bat team for each runner that touches home plate after having touched each of the other bases which is interpreted to be a finishing position; more than one run can be scored during in the case where there is a least one runner in addition to the batter); *receiving, by the at least one processor, one or more second type of bets, each second type of bet having an associated bet amount and comprising a second bet that the total number of units earned by the particular participant in the plurality of events will fall within a second range of numbers* (second bets can be either bets that no runs, one run, two runs or three runs will be scored by the at bat team during half an inning; see Fig. 8b and col. 17, lines 13-23); *determining, by the at least one processor, the total number of units earned by the particular participant over the course of the plurality of events* (runs are tallied for the half

inning); *determining, by the at least one processor, whether the first type of bets or the second type of bets are winning bets based at least in part on whether the total number of units earned by the particular participant falls within the first range of numbers or the second range of numbers* (Betting lines are terminated as soon as outcome of the betting event is known, at which time the winners are paid off; see col. 11, lines 4-6; this would include knowing the number of runs scored when the half inning is over); *determining, by the at least one processor, a betting pool based at least in part on the total of the bet amounts associated with the first type of bets and the total of the bet amounts associated with the second type of bets; and determining, by the at least one processor, an amount of a payout based at least in part on the betting pool and the total of the bet amounts associated with the winning bets* (The payoffs on each betting line are "parimutuel style," meaning that the winners split the "pot" in proportion to the size of their bets; see col. 12, lines 53-55 and col. 18, line 27 to col. 20 line 25).

Regarding claim 17, Simon discloses *an apparatus, comprising: at least one processor; and memory storing computer instructions that, when executed by the at least one processor, cause the at least one processor to: receive one or more first type of bets, each first type having an associated bet amount and comprising a bet that the total number of units earned by a particular participant over a course of a plurality of events will fall within a first range of numbers* (first type of bets are bets that one team will score more than three runs in an inning; the participants are the two teams respectively; the plurality of events are at bats and outs that take place within the inning when one team is batting; see Fig. 8b and col. 17, lines 13-23), *wherein: the particular participant is selected from a plurality of participants each participating in at least one of the plurality of events; and for each of the plurality of events, a plurality of units are allocated*

*among participants according to a respective finishing position of each participant (units are runs scored during each of the at bats or outs; they are awarded to the at bat team for each runner that touches home plate after having touched each of the other bases which is interpreted to be a finishing position; more than one run can be scored during in the case where there is a least one runner in addition to the batter); receive one or more second type of bets, each second type of bet having an associated bet amount and comprising a second bet that the total number of units earned by the particular participant in the plurality of events will fall within a second range of numbers (second bets can be either bets that no runs, one run, two runs or three runs will be scored by the at bat team during half an inning; see Fig. 8b and col. 17, lines 13-23); and determine the total number of units earned by the particular participant over the course of the plurality of events (runs are tallied for the half inning); determine whether the first type of bets or the second type of bets are winning bets based at least in part on whether the total number of units earned by the particular participant falls within the first range of numbers or the second range of numbers (Betting lines are terminated as soon as outcome of the betting event is known, at which time the winners are paid off; see col. 11, lines 4-6; this would include knowing the number of runs scored when the half inning is over); determine a betting pool based at least in part on the total of the bet amounts associated with the first type of bets and the total of the bet amounts associated with the second type of bets; and determine an amount of a payout based at least in part on the betting pool and the total of the bet amounts associated with the winning bets (The payoffs on each betting line are "parimutuel style," meaning that the winners split the "pot" in proportion to the size of their bets; see col. 12, lines 53-55 and col. 18, line 27 to col. 20 line 25).*

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 53, 55-58, 60, 61, 64, 65, 67-70, 72, 73 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon et al. (pat. no. 7,172,508) in view of Downes (pub. no. 2003/0199315) and non patent literature found at

[http://en.wikipedia.org/wiki/List\\_of\\_Formula\\_One\\_World\\_Championship\\_points\\_scoring\\_systems](http://en.wikipedia.org/wiki/List_of_Formula_One_World_Championship_points_scoring_systems) (hereafter "F1 Championship Scoring").

12. Regarding claims 53 and 65, Simon discloses a betting method comprising determining an index number representing a score earned by a participant over a plurality of contests (index number is number of runs scored by one team in half an inning which includes multiple at bats and outs; See Fig. 8b and col. 17, lines 13-23) and offering at least two types bets based upon the score achieved during the plurality of bets (first type of bets are bets that one team will score more than three runs in an inning; the plurality of contests are at bats and outs that take place within the half inning; see Fig. 8b and col. 17, lines 13-23), accepting bets of both types (players bet one or more tokens on the open betting lines; col. 6, lines 39-44), determining the results of the plurality of contests (Betting lines are terminated as soon as outcome of the betting event is known, at which time the winners are paid off; see col.6, lines 48-50 and col. 11, lines 4-6; this would include knowing the number of runs scored when the half inning is over) and paying off the bets in pari-mutuel style (The payoffs on each betting line are "parimutuel style," meaning that the winners split the "pot" in proportion to the size of their bets; see col. 12, lines 53-55 and col. 18, line 27 to col. 20 line 25). It is noted that the specific embodiment of Simon discussed above does not disclose wagering on a jockey, where the jockey receives a variable number of points depending on his finishing position in a series of races. Given that the Simon invention seeks to provide many betting line opportunities during the contest run it would have been natural for a person having ordinary skill in the art at the time of the invention to view other patents and patent applications directed to betting and betting systems in order to discover additional bets that could be turned into betting lines. In addition, such a person would naturally

look to non patent literature like Wikipedia, treatises and general references for analogous racing sports such as car racing in order to discover additional ideas for betting lines. Downes teaches of pari-mutuel wagering based upon performance statistics of human players instead of using the score of a single game ([0016], [0017]) and F1 Championship Scoring teaches of a performance statistic for drivers participating in a series of car races calculated by awarding points according to their finishing position in a race and totaling the points across a series of races (see Points scoring systems, p. 1 and 2). Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the Simon invention so that the range bets were based on a performance statistic of a jockey rather than a game score as taught by Downes and to use a performance statistic that was the accumulated points over a series of races that were awarded based upon finishing position as taught by F1 Championship Scoring. Pari-mutuel wagering based upon the performance of a single participant would allow a bettor to more easily apply his skill or knowledge (Downes [0017]). A point distribution based on finishing position would measure jockey skill while minimizing differing circumstances like track conditions and horse quality thereby allowing a bettor to more easily apply his skill or knowledge.

13. Regarding claims 55 and 67, Simon discloses range betting (player can bet that 3 or more runs will be scored or that 2 runs, 1 run or no runs will be scored; see Fig. 8b and col. 17, lines 13-23).

14. Regarding claims 56-58 and 68-70, Simon discloses more than two contiguous ranges that can be wagered on (player can bet that 3 or more runs will be scored or that 2 runs, 1 run or no runs will be scored; see Fig. 8b and col. 17, lines 13-23).

15. Regarding claims 60, 61, 72 and 73, Simon discloses additional index bets are offered in the middle of the series of events (subsequent lines open after first and second outs; see col. 17, lines 13-23).

16. Regarding claims 64 and 76, Simon discloses events taking place over extended periods of time (col. 10, lines 5-11).

17. Claims 54 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon et al. (pat. no. 7,172,508), Downes (pub. no. 2003/0199315) and NPL "F1 Championship Scoring" as applied respectively to claims 53 and 65 above and further in view of Berry et al. (pub. no. 2002/0115488).

18. Regarding claims 54 and 66 it is noted that Simon, Downes and F1 Championship Scoring do not explicitly disclose a performance statistic for a human player that is based on amount of money earned. Berry however, teaches of a performance statistic for a human player that is based on money earned (abstract). Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the Simon, Downes and F1 Championship Scoring invention to include a performance statistic for a human player that is based upon money earned as taught by Berry. Tracking a performance statistic for a human player that is based on monetary winnings would be more exciting to players than points thereby increasing the perceived entertainment value of the experience and inducing increased participation.

19. Claims 59, 71, 77, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon et al. (pat. no. 7,172,508), Downes (pub. no. 2003/0199315) and NPL "F1 Championship Scoring" as applied respectively to claims 53 and 65 above and further in view of Berry et al.



(pub. no. 2002/0115488) and Corkin Jr. (pat. no. 4,031,376). Regarding claims 59 and 71 it is noted that Simon, Downes and F1 Championship Scoring do not explicitly disclose a performance statistic for a human player that is based on amount of money earned or that money earned is distributed based upon the finishing position of the human player in a race. Berry however, teaches of a performance statistic for a human player that is based on money earned (abstract) and Corkin Jr. teaches that horse racing distributes purse money based upon finishing position in a horse race (col. 4, line 57 to col. 5 line 2). Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the Simon, Downes and F1 Championship Scoring invention to include a performance statistic for a human player that is based upon money earned as taught by Berry and for that money to be distributed based upon finishing position in a horse race as taught by Corkin Jr. Tracking a performance statistic for a human player that is based on monetary winnings would be more exciting to players than points thereby increasing the perceived entertainment value of the experience and inducing increased participation.

20. Claims 62 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon et al. (pat. no. 7,172,508), Downes (pub. no. 2003/0199315) and NPL "F1 Championship Scoring" as applied respectively to claims 53 and 65 above and further in view of Rossides (pub. no. 2004/0058731).

21. Regarding claims 62 and 74, it is noted that Simon, Downes and F1 Championship Scoring do not explicitly disclose paying off a bet prior to termination of the betting line and canceling the bet. Rossides however, teaches of a betting system that allows players to sell their wagering positions on a secondary market ([0334]-[0338]). Selling a wagering position would

result in a payment before termination of the betting line and would cancel the bet from the perspective of the seller since that seller no longer has the right to receive a payout from that wager. Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the Simon, Downs and F1 Championship Scoring invention to include selling wagering positions to a secondary market as taught by Rossides. Enabling sales to a secondary market would reduce the perceived risk of wagers thereby inducing more players to wager.

### ***Double Patenting***

22. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

23. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting

ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

24. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

25. Claim 1, 17 and 53-78 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1, 2, 15, 16 and 24-69 of copending Application No. 10/667755. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both claim a pari-mutuel betting method and system where a participant accumulates points over a plurality of events according to finishing position in each event and where bets are made that the total of those points falls within a specified range.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Response to Arguments***

26. Applicant's arguments filed on September 12, 2011 have been fully considered but they are not entirely persuasive.

27. On page 17 and 18 Applicant argues that claims 53 and 65 are not indefinite. Examiner agrees. Rejection withdrawn.

28. On page 19, Applicant argues that claims 55, 58, 67 and 70 are not indefinite because one of ordinary skill in the art would understand a range of number does not include the endpoints.

Applicant cites the [0026] for support of this assertion. Examiner respectfully disagrees.

Paragraph [0026] states that landing on the index number is unlikely which indicates that an end point might possibly be included in a described range. There is no further evidence pointing toward either conclusion so the issue remains unclear.

29. On pages 19 and 20, Applicant argues that claims 61, 62, 73 and 74 are not indefinite because one of ordinary skill in the art would know what it meant to lock in a game or loss given disclosure in [0063] and cancel and cancel a bet given the disclosure of [0034]. Examiner agrees. Rejection withdrawn.

30. On pages 20 and 21, Applicant argues that claims 1 and 17 are patentable because Simon does not disclose bets against a second range of numbers. Examiner respectfully disagrees. A range of numbers could certainly contain zero or one numbers. Wolfram Mathworld (<http://mathworld.wolfram.com/search/?query=range&x=12&y=10>) defines range as "If  $f: D \rightarrow Y$  is a map (a.k.a. function, transformation, etc.) over a domain  $D$ , then the range of  $f$ , also called the image of  $D$  under  $f$ , is defined as the set of all values that  $f$  can take as its argument varies over  $D$ , i.e.,". Sets are defined as "a finite or infinite collection of objects in which order has no significance, and multiplicity is generally also ignored...The symbol  $\emptyset$  is used to denote the set containing no elements, called the empty set." (<http://mathworld.wolfram.com/Set.html>). Therefore a set can contain zero, 1 or more elements. Notwithstanding the foregoing, it is held that dividing the number of runs in an inning into one or more ranges is a design choice fully within the knowledge of a person having ordinary skill in the art. There is no functional difference between the 4 or more range and the 0, 1, 2 and 3 bet ranges and they could have been grouped differently without any unpredictable results.

31. On pages 20 and 21, Applicant argues that claims 53 and 65 are patentable because Simon does not disclose a bet that a score will fall within a second range of numbers. Examiner respectfully disagrees for the same reason set for above.

***Conclusion***

32. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAWRENCE GALKA whose telephone number is (571)270-1386. The examiner can normally be reached on M-Fr 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melba Bumgarner can be reached on (571) 272 4709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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LSG 11/9/11